

5/9/85



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SOMERSWORTH PROFESSIONAL ADMINISTRATORS'
ASSOCIATION

Petitioner

and

CITY OF SOMERSWORTH, NEW HAMPSHIRE

Respondent

CASE NO. M-0576

DECISION NO. 85-34

APPEARANCES

Representing the Somersworth Professional Administrators' Association

Donald Mitchell, Esq., Counsel

Representing the City of Somersworth

Daniel M. Cappiello, Esq., Counsel

Also in Attendance

Charles D. Burkam, Mayor
Ronald W. Perron, Police Chief
Thomas Marcoux, Finance Director
Michael Reynolds, Director of Planning
James Rodden, Highway Commissioner
Kent Newkirk, Foster's Newspaper

BACKGROUND

On January 16, 1985, a petition for certification of a bargaining unit for the City of Somersworth was filed with the Public Employee Labor Relations Board on behalf of the "Somersworth Professional Administrators' Association". The petition asks that the PELRB approve a unit of the professional permanent full and part-time department heads employed by the City of Somersworth, New Hampshire, some fourteen positions in all. The fourteen positions petitioned for include the following, each with one person in that position: Finance Director; Chief Assessor; City Clerk; Welfare Director; Fire Chief; Library Director; Tax Collector; Director of Planning; Waste Water Superintendent; Highway Commissioner; Probation Director; Director of Recreation; City Engineer and Police Chief.

The City of Somersworth filed exceptions to the petition for certification objecting to the inclusion of any of the positions which were nominated by the Mayor and approved by the City Council as being within the meaning of RSA 273-A:1, IX (b); this objection would apply to thirteen of the fourteen positions and the City further objected to the inclusion of the Probation Director since the Probation Director is selected by the District Court Judge and is not active in working within the administrative guidelines of the other mentioned positions. The City further objected that certain individuals are in fact acting in a managerial capacity, therefore, may not be included in the bargaining unit and that the Finance Director and Director of Planning both hold a "confidential" relationship with the City and therefore may not be included in the bargaining unit under RSA 273-A:1, IX (c).

A hearing was held in the Public Employee Labor Relations Board's office in Concord, New Hampshire on April 18, 1985 with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

With the exception of the Probation Officer, who is appointed by the Judge and whose salary is set by the Judge and who answers directly to the Judge and the Court and not to the Mayor or subsequent City Manager, all other employees are appointed to their position by the City Council of Somersworth after having been nominated by the Mayor. Their terms of office, in two cases, are coterminous with the Mayor but in other cases are for a fixed term exceeding the term of the Mayor. The argument that the employees are "appointed" employees and therefore must be excluded from the unit under RSA 273-A:1, IX (b) would have the statute apply this definition to virtually all public employees in the State of New Hampshire since all appointments to positions have ultimately to be approved by the executive of all municipalities and other public employers. We believe that the term "appointed" must mean that a special appointment of some kind, coterminous with the term of the Mayor or other chief executive official, for a specific purpose known to that official and subject to the removal by that official must be the intent of the act in excluding these people from coverage under RSA 273-A.

Testimony was received at the hearing to indicate that, with the exception of the Probation Officer, the other employees petitioned occupy significant supervisory positions for their departments and while they have significant duties, all the hiring and firing of personnel are done only with permission of the Mayor (and in the future will be done by a City Manager) and that while the recommendations of the supervisory personnel are taken into account, they themselves do not have the power to hire and fire.

Further testimony with respect to the "confidentiality" of the positions of Finance Director and Planning Director revealed that the information to which they are privy in the conduct of their ordinary business would be information that would be available to any intelligent and motivated person interested in the collective bargaining process in the City regardless of which side that individual might be on. The Finance Director has information with respect to the costs to the City of various proposals but these "costing-out" provisions would be available to others outside of the City administration as well if they were diligent. The Planning Director has information about tax base and property taxes within the City and may indeed at times have information regarding "advance notice" of industry moving into the Town and thereby increasing the tax base of the Town. The connection of this information to the collective bargaining

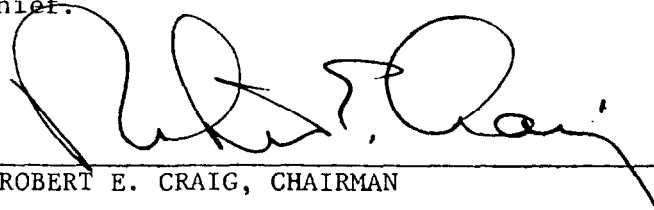
process is extremely vague since presumably the Mayor and his bargaining team would also be aware of such developments and therefore it would not be of particular consequence to either side in their negotiations during the collective bargaining process.

Additional testimony was received indicating that the Police Chief, Fire Chief, Waste Water Superintendent, Highway Commissioner were all part of the policy making machinery of the City and they all had supervision over union personnel. It is clear that these individuals and their positions are in fact supervisory positions and that they exercise significant authority in the name of the City over other City employees. It is also clear that most of these individuals are members of the regular classification system of the City with the exception of the Probation Officer and the Recreation Director who is a part-time employee. It also became clear at the hearing that the salary of the Probation Officer has been effected in the past by the Mayor having communications with the local Judge and that the Probation Officer does provide a service to the City of Somersworth and indeed some minor bookkeeping chores as well. Additional testimony was received to indicate that the various department heads served as advisors to the Mayor and/or the negotiating team during collective bargaining with other City employees but were not themselves a part of the normal collective bargaining process for the City and were not therefore privy to anything which would in any way destroy their capacity to act independently for the City while at the same time belonging to a organized labor union of their own and limited to supervisory personnel.

DECISION AND ORDER

It is the finding of the Public Employee Labor Relations Board that thirteen of the positions petitioned for by the Somersworth Professional Administrators' Association do share the necessary community of interest working as they do in the same craft-municipal administration, each having some supervisory capacity working in the same geographic location in the City of Somersworth, with many sharing the same classification system with other employees and that these employees can and have a right to be in the same bargaining unit for the purposes of RSA 273-A. The Probation Director does not share this community of interest and is excluded from the unit.

The Public Employee Labor Relations Board therefore orders the creation of a bargaining unit in the City of Somersworth, composed of the following positions and excluding all others: Finance Director; Chief Assessor; City Clerk; Welfare Director; Fire Chief; Library Director; Tax Collector; Director of Planning; Waste Water Superintendent; Highway Commissioner; Director of Recreation; City Engineer and Police Chief.



ROBERT E. CRAIG, CHAIRMAN

Signed this 9th day of May, 1985.

By unanimous vote. Chairman Robert E. Craig presiding. Members Richard Roulx, James Anderson and Seymour Osman present and voting. Also present, Evelyn C. LeBrun, Executive Director.